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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re the Marriage of MARILYN and  
ANTONIO GELUZ.

MARILYN ACHICO GELUZ,

Respondent,

v.

ANTONIO SISON GELUZ,

Appellant.

E068561

(Super.Ct.No. FAMSS1005823)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,  
Judge. Affirmed in part; reversed in part.

Antonio Sison Geluz, in pro. per., for Appellant.

No appearance for Respondent.

Appellant Antonio Sison Geluz (Husband) appeals from the denial of his request  
for order (RFO) filed pursuant to California Rules of Court, rule 5.92 et. seq., in the  
family court. He and respondent Marilyn Achico Geluz (Wife) were involved in

dissolution proceedings.<sup>1</sup> The family court denied Husband's RFO seeking an order that Wife quitclaim her separate property located on Manitoba Drive in Fontana (Property) to him so he could seek a modification of the loan, which was in Wife's name only. Wells Fargo Bank was set to foreclose on the Property for nonpayment of the mortgage. In addition to denying the RFO, the family court ordered that Husband, who was the only party living in the Property, vacate within 30 days. In addition, he was ordered to pay Wife \$9,536.50, which was half of the rental payments made by a former tenant in the Property to Husband and of which Wife was never given a share.

In this appeal, Husband claims as follows: (1) the family court abused its discretion by ruling beyond what was requested in his RFO; (2) the family court usurped the power and authority of the unlawful detainer process by ordering the eviction of Husband and all other tenants without notice or process; (3) the family court abused its discretion by retrying the eviction of Husband's tenant and awarding rental income to Wife without such request by Wife; (4) the facts did not support that he breached his fiduciary duty to Wife; (5) the family court disallowed him from having a lawyer represent him in the matter depriving him of due process and fair procedures by trying a matter not on the court calendar; (6) it was "extremely insensitive" for the family court to decide that the Property should proceed to foreclosure when a loan modification was offered by the bank, and to allow his former tenant's testimony; and (7) the family court

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<sup>1</sup> Wife has not filed a respondent's brief in this appeal.

failed to take judicial notice of declarations previously made by Wife that the Property was community property.

We reverse in part and affirm in part.

### **FACTUAL AND PROCEDURAL HISTORY**

The dissolution of marriage was entered on April 22, 2013, but issues of child support and property division were still pending in the family court. Wife filed a responsive declaration to the request for order on April 11, 2017. Husband's RFO, which was filed on October 19, 2016, but is not part of the record on appeal, apparently requested an order that Wife quitclaim the Property to him so that he could obtain a loan modification to stop a foreclosure on the Property. The declaration opposed the RFO. Wife claimed the Property was her separate, sole property. She attached a quitclaim deed from Husband to her dated August 15, 2007, granting her the Property as her sole property. On March 21, 2017, Husband also filed an RFO requesting a stay of the foreclosure sale—also not part of the record.

A hearing was conducted on April 18, 2017. Inocencia May Crawford testified, over Husband's objection, that she had rented a room in the Property from Husband who claimed to be the landlord and owner of the Property. Husband also lived in the Property. Husband eventually had her evicted. She paid a total of \$19, 073.99 to Husband for rent on the Property.

Wife presented evidence to the family court that Husband had signed a quitclaim deed granting the Property to her as her separate property on August 15, 2007. Wife advised the trial court she could not afford the mortgage payment on the Property and

Husband had never paid anything toward the mortgage. She did not want to make the payments as she had a separate apartment for her and her children. Wife had bought the home in her own name and only she was on the loan even though they were married when it was obtained.

In January 2013, Husband was able to get an order giving him exclusive use of the Property but he was to pay the property tax, insurance, mortgage and utilities. Husband never paid anything and the amount owed by Wife was now \$600,000 because of interest and no payments being made. She did not want a loan modification and wanted to surrender the Property to the bank.

Wife complained that Husband would not leave the Property but she had not filed an unlawful detainer action. Husband could not provide evidence that he made any payments on the mortgage for the Property. Husband claimed he executed the quitclaim deed in 2007 so that Wife could get a better loan; he did not give up his equity. He insisted they would be better off if he could get the loan modification.

The family court noted that Wife had filed a trial brief, which included the rental agreement and payment history for Crawford. Husband argued that there was a civil case with Wells Fargo seeking a loan modification that took jurisdiction from the family court. The trial court noted the last case filed by Husband against Wells Fargo seeking a stay of the foreclosure was denied; there were no pending civil cases. There was no bankruptcy case.

Wife argued that despite Husband receiving rent on the Property, she never received any of the money. She was the sole supporter of herself and their children.

Wife made comments about the nonpayment of child support but the family court advised her she would have to file a separate RFO. The family court stated, “The only request for order today is Mr. Geluz requesting to stay foreclosure.” The family court clarified that Husband was also requesting that it order Wife to quitclaim the Property to him so he could obtain a loan modification. The family court stated it was planning to rule that Husband had to vacate the Property in 30 days and Husband objected, arguing that issue had to be decided by the “San Bernardino Superior Court.” He also objected to the family court awarding damages to Wife.

On April 24, 2017, the family court issued a final order denying the RFO as follows: “[Husband] signed a quitclaim deed on 8/15/07 transferring the . . . [P]roperty to [Wife] as her sole and separate property. The loan on the . . . [P]roperty is solely in [Wife]’s name. [Husband] has breached his fiduciary duty regarding the [P]roperty resident. [Husband]’s request for [Wife] to sign a quitclaim deed transferring the . . . [P]roperty to him is denied. [Husband] is ordered vacate the . . . [P]roperty within 30 days of this date. [Husband] is to pay [Wife] \$9,536.50 for half of the amount of the rent collected from the . . . [P]roperty. [Wife] is to communicate with the lending bank regarding the foreclosure process.” (All caps. omitted.)

## **DISCUSSION**

### **A. ORDERS BEYOND THE RFO**

Husband’s first four arguments pertain to the family court exceeding its jurisdiction by ruling on issues that were not part of the RFO. He insists the family court exceeded its jurisdiction by ruling beyond what was requested in his RFO; by usurping

the authority of the unlawful detainer process by ordering the eviction of Husband and all other tenants without notice or due process; and by awarding rental income to Wife without Wife filing her own RFO arguing he breached his fiduciary duty.

California Rules of Court, rule 5.92 provides for the process of requesting an order in family court. A request for order form (FL-300) must be used to ask for a court order; and a responsive declaration to a request for order is submitted on a FL-320 form. (Cal. Rules of Court, rule 5.92(1)(B), (C).) California Rules of Court, rule 5.92(1)(A) provides, that “The term ‘request for order’ has the same meaning as the terms ‘motion’ or ‘notice of motion.’ ” Pursuant to rule 5.92 (b)(1), “The *Request for Order* (FL-300) must set forth facts sufficient to notify the other party of the moving party’s contentions in support of the relief requested.” A memorandum of points and authorities need not be filed unless requested by the family court. (Cal. Rules of Court, rule 5.92(b)(6).)

California Rules of Court, rule 5.92 (g)(2) provides, “The responding party may request relief related to the orders requested in the moving papers. However, unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300) and following the filing and service requirements for a *Request for Order* described in this rule.”

While Husband has failed to provide this court with the RFO he filed in the family court, it is clear from the record that the family court understood the order asked for a quitclaim deed so Husband could obtain a loan modification from Wells Fargo Bank. The family court noted that “the only request for order today is [Husband]’s requesting to

stay foreclosure” and seeking to do a loan modification. Despite this comment, the family court awarded damages to Wife and ordered Husband to vacate the Property.

There is no record of Wife also filing an RFO seeking to have Husband removed from the Property or seeking damages from rent received from a former tenant. Wife admitted she had not filed unlawful detainer proceedings against Husband. The family court advised the parties of its order at the end of the hearing and Husband was not given notice that such orders would be entered prior to the hearing or even during the hearing.

An RFO must be filed and give “notice to the opposing party of the basis of the RFO.” (*In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1271.) Here, no notice was given to Husband that he would be removed from the Property and that damages for rental income would be assessed against him based on his filing of a RFO seeking a quitclaim deed.

The family court exceeds its jurisdiction when it issues orders that are not based on any pending motion. (*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 640.) The family court exceeded its jurisdiction here by ordering that Husband vacate the Property in 30 days and pay rental income to Wife without a RFO from Wife or any type of notice of an unlawful detainer proceeding. These orders are reversed. Wife must give notice to Husband to vacate the Property if he still occupies the Property, and if she seeks rental payments she should file her own RFO giving notice to Husband.

B. REMAINING CLAIMS

Husband has made three remaining claims. First, Husband insists that the family court abused its discretion by refusing to allow his hired lawyer to represent him at the hearing.

Initially, the trial court's judgment is presumed to be correct on appeal, and it is the burden of the party challenging it to affirmatively demonstrate error. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) A failure to present arguments with specific citation to the record on appeal and citation to legal authority can result in forfeiture of any contention that could have been raised on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Here, Husband has provided no citation to the record to support his claim that the family court denied his request to have counsel present. Moreover, he has not provided a cogent argument as to how he was harmed. He merely states, "The [family c]ourt violated appellant's Due Process Rights by refusing appellant his request for counsel to participate in trial and right to advance knowledge of the major and critical issues the court will try in some prior schedule of proceedings such as the RFO mentioned earlier." It is well established that "[a]n appellate court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) Husband presents no comprehensible argument supported by any legal authority. It is appropriate for this court to deem the claim on appeal abandoned. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1120.)

Second, Husband appears to claim that the family court erred by not allowing him to seek a loan modification, and that it should not have allowed Crawford to testify because the unlawful detainer action involving her had already been heard in the San Bernardino Superior Court in Fontana. He insists it was “extremely insensitive” of the family court to allow the loss of the family home by allowing the foreclosure to take place when a loan modification was offered by Wells Fargo Bank.

It is the burden of the party challenging the family court’s order to affirmatively demonstrate error and present an adequate record for review. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Here, there is no information in the record supporting that the unlawful detainer action against Crawford had already been heard in the superior court. Nonetheless, we cannot see how he was prejudiced based on our reversal of the damages awarded against him. Moreover, there is no information in the record that Husband had been approved for a loan modification. As such, he has failed to affirmatively demonstrate error.

Finally, Husband makes a vague claim that the family court “abused [its] discretion when [it] deliberately IGNORED the fundamental declarations at the time of her filing of Divorce” that the Property was community property. Once again Husband provides no citation to the record as to when the trial court made such ruling. He only refers to the “Family Court Docket Transcripts” and an exhibit attached to his opening brief but not to where the trial court excluded or *ignored* such evidence. “It is not our place to comb the record seeking support for assertions parties fail to substantiate.”

(*Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 534.) Husband has failed to meet his burden showing the trial court abused its discretion.

We understand that defendant is representing himself on appeal. However, in *propria persona* litigants are treated the same as attorneys. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [“Pro. per. litigants are held to the same standards as attorneys”].) Despite Husband being a self-represented litigant, he must follow the rules of appellate procedure and present intelligible argument supported by the record and applicable legal authority. (*Nwosu v. Abu, supra*, 122 Cal.App.4th at pp. 1246-1247.) Husband has failed to demonstrate error.

### **DISPOSITION**

The findings and orders issued on April 24, 2017, ordering Husband to vacate the Property in 30 days and awarding Wife \$9,536.50 in damages is reversed. The order is otherwise affirmed. Husband is to bear his own costs on appeal.

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MILLER

J.

We concur:

RAMIREZ

P. J.

SLOUGH

J.